IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 656 of 1998(B)

CC.70/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL
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APPELLANT/COMPLAINANT:

HAJJI MOHAMMED SHAJAHAN,SHEEJA MANZIL
MARKET ROAD, KANIAPURAM, ANDOORKONAM PANCHAYATH,
PALLIPURAM VILLAGE, THIRUVANANTHAPURAM DIST.
REP. BY NAGOOR PICHA MOHAMMED SALI.
THE POWER OF ATTORNEY HOLDER OF THE APPELLANT COMPLAINANT RESIDING AT SHEEJA MANZIL, ANDOORKONAM, THIRUVANANTHAPURAM DIST. (POWER OF ATTORNEY HOLDER OF THE APPELLANT)

BY ADV. SRI.B.JAYASURYA

RESPONDENT/ACCUSED:

ABDUL KHARIM ASHARAF, CHILANTHARA THEKKATHIL VEEDU, KRISHNAPURAM, KAYAMKULAM, ALAPPUZHA DIST.

BY PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.656 OF 1998 (B)

Dated this the 31st day of January, 2007

JUDGMENT

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act contending that two cheques, one for Rs.1,00,000/- and another for Rs.60,000/- issued by the respondent were dishonored for 'insufficiency of funds'. The court below found that the cheques were not issued for a legally enforceable debt. Court also found that transactions between accused and complainant were not disclosed in the complaint. It is also not stated that when the complainant borrowed the money and when the complainant gave the money to the accused. Admittedly cheque was not issued on the date money was borrowed. However complainant was not examined. But PW1 Power of Attorney holder was examined and he was not aware about the money transaction between the complainant and the accused. PW2 only stated that he saw handing over of the cheques by accused to the complainant but will not prove that it was issued for a legally enforceable

debt. According to the accused, he owed some money to PW2 who was in gulf country and when PW2 came to India he was asked to repay the money and accused requested to grant some more money. PW2 agreed to give some more money on issuing two blank cheques in the name of the complainant. That contention was not accepted. But the trial court found that there is absolutely no evidence to prove that Exts.P2 and P3 cheques were issued for a legally enforceable debt or accused has borrowed any money from the complainant. In the above circumstances, trial court found that complaint under Section 138 of the Negotiable Instruments Act will not lie as it was not proved that cheque was issued for a legally enforceable debt. Considering the facts and circumstances of the case, I am of the view that the view of the trial court is a possible one based on the facts and evidence and no grounds are made out to interfere in the matter. In this connection, I refer to the decision of the Apex Court in **Ms.Narayana Menon @ Mani v. State of Kerala (2006 (6) S.C.C.39)**. I also note that even though notice was ordered on 28.8.1998, so far no effective steps were taken by the appellant to serve notice on the respondent. Notice was returned stating that he

was in gulf country. In any event, there is no merit in this appeal and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.656 OF 1998 (B)

JUDGMENT

31st January, 2007